

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
THOMAS K. KURIAN)	FCC File No. 0002196859
Assignor)	
)	
AMTS CONSORTIUM, LLC)	
Assignee)	
)	
Application for Consent to the Partial Assignment)	
of the License for Public Coast Station WQCP809)	

ORDER ON RECONSIDERATION

Adopted: April 16, 2007

Released: April 17, 2007

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* We have before us a Petition for Reconsideration (Petition)¹ filed by Pappammal Wellington Kurian (Ms. Kurian) seeking reconsideration of a decision² by the former Public Safety and Critical Infrastructure Division (Division),³ Wireless Telecommunications Bureau, dismissing in part and denying in part the “Notification of Objection to the Pending Application for Assignments of Authorization and Transfers of Control from Pappammal Kurian” (Objection).⁴ The Petition seeks reconsideration of the Division decision; and requests that the above-captioned application for the partial assignment of the license for Automated Maritime Telecommunications System Station WQCP809 from Thomas K. Kurian (Mr. Kurian) to AMTS Consortium, LLC, (ACL) (Application)⁵ be denied, or that the consent thereto be conditioned on “further action, if necessary, following resolution of the Nevada court proceedings” regarding the division of the Kurians’ marital assets.⁶ For the reasons discussed below, we

¹ Pappammal Wellington Kurian, Petition for Reconsideration (filed May 3, 2006) (Petition). We also have before us an Opposition to Petition for Reconsideration filed by Thomas K. Kurian on May 17, 2006 (Kurian Opposition); an Opposition to Petition for “Reconsideration” and Request for Expedited Action upon the “Reconsideration,” filed by AMTS Consortium, LLC on May 24, 2006 (ACL Opposition); and a Reply to Oppositions to Petition for Reconsideration filed by Pappammal Wellington Kurian on June 13, 2006 (Reply).

² Letter dated Apr. 3, 2006, from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, to Byron L. Mills, Esq. and Darren L. Walker, Esq., Mills & Mills L.L.C., (*Division Letter*).

³ Pursuant to a reorganization effective September 25, 2006, certain duties of the Public Safety and Critical Infrastructure Division were assumed by the Mobility Division. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

⁴ Pappammal Wellington Kurian, Notification of Objection to the Pending Application for Assignments of Authorization and Transfers of Control from Pappammal Kurian (filed June 23, 2005) (Objection).

⁵ FCC File No. 0002196859 (filed June 14, 2005). The Objection opposed the grant of any assignment of license or transfer of control application that included licenses held in the names of, *inter alia*, Mr. Kurian “or any of his aliases,” but specifically identified only two such applications, one of which is the Application. See Objection at 1. The other application identified in the Objection was an application for the *pro forma* assignment of sixty-nine licenses from S M Leasing and Rental Ltd. to Richard R. Susainathan. FCC File No. 0002204226 (filed June 15, 2005). That application was withdrawn on April 7, 2006, and is not discussed in the Petition.

⁶ See Petition at 3. Although the relief requested by Ms. Kurian in the Objection was denial of the Application or at least deferral of action on the Application, in the Petition she indicates that she would be satisfied if a grant of the

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deny the Petition.

2. *Background.* The Objection argued that the Application should be denied because the proposed partitioning of the license for Station WQCP809 would contravene the terms of a Joint Preliminary Injunction by the Clark County, Nevada family court presiding over the Kurians' divorce and the division of their marital assets.⁷ In opposition to the Objection, Mr. Kurian and ACL argued, *inter alia*, that the transaction was proper because the court had amended the Joint Preliminary Injunction to permit the sale the license (provided the proceeds were split between Mr. and Ms. Kurian), and that the Objection was procedurally defective.⁸

3. The Division dismissed the Objection insofar as it was a petition to deny,⁹ and denied it on the merits to the extent it was an informal request for Commission action pursuant to Section 1.41 of the Commission's Rules.¹⁰ The Division explained that the Nevada litigation between the Kurians was "precisely the type of private dispute with respect to which the Commission defers to a court of competent jurisdiction."¹¹ The Division also stated that the Nevada court was better positioned than the Commission to determine whether the proposed partitioning of the license for Station WQCP809 would violate the Joint Preliminary Injunction, and could take appropriate remedial action upon finding such a violation.¹² The Division thus concluded that, under settled Commission precedent, the pending proceedings before the Nevada court did not provide a basis for denying the Application.¹³ The Division also declined to defer acting on the Application until the Nevada court ruled on a contempt motion filed by Ms. Kurian because the Division was not persuaded "that acting on the [Application] would interfere with the Nevada court's authority with respect to the matters before it."¹⁴ The Division subsequently consented to the Application.

4. *Discussion.* Reconsideration is appropriate only where the petitioner either demonstrates a material error or omission in the underlying order or raises additional facts not known or not existing until after the petitioner's last opportunity to present such matters.¹⁵ A petition for reconsideration that

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application was conditioned "on further action, if necessary, following resolution of the Nevada court proceedings." *Id.* In the Reply, however, Ms. Kurian clarifies that she still would prefer that the Commission deny or defer processing of the Application instead of granting it conditionally. *See* Reply at 2 n.3.

⁷ *See* Objection at 1.

⁸ *See Division Letter* at 1 (discussing the opposition pleadings).

⁹ The Division concluded that the Objection was subject to dismissal because it had not been served on the applicants, in violation of Section 1.939(c) of the Commission's Rules, 47 C.F.R. § 1.939(c). The Division added that the Objection also appeared to violate other provisions of Section 1.939, but that it was unnecessary to reach that question in light of the finding of a violation of the service requirement. *Division Letter* at 2. The Petition does not challenge the conclusion in the *Division Letter* that the Objection was subject to dismissal as a petition to deny.

¹⁰ *Division Letter* at 2; *see* 47 C.F.R. § 1.41.

¹¹ *See Division Letter* at 2, citing *Regents of the University System of Georgia v. Carroll*, 338 U.S. 586, 602 (1950); *Listener's Guild v. FCC*, 813 F.2d 465, 469 (D.C. Cir. 1987); PCS 2000, L.P., *Memorandum Opinion and Order*, 12 FCC Rcd 1681, 1691 ¶ 23 (1997).

¹² *Id.*

¹³ *Id.* The Division also declined to deny the Application based on allegations regarding the applicants' character qualifications that were raised by Ms. Kurian for the first time in her replies to oppositions to the Objection, rather than in the Objection itself. *Id.* at 3. The Petition does not challenge that aspect of the *Order*.

¹⁴ *Id.* at 3.

¹⁵ *See* *WWIZ, Inc.*, 37 FCC 685, 686 ¶ 2 (1964), *aff'd sub. nom. Lorain Journal Co. v. FCC*, 351 F.2d 824 (D.C. Cir. 1965), *cert. denied*, 383 U.S. 967 (1966).

simply reiterates arguments that were previously considered and rejected will be denied.¹⁶ We conclude that the Petition does not demonstrate material error or omission, and does not raise any new facts of decisional significance.

5. In the Petition, Ms. Kurian again asserts that the proposed transaction between Mr. Kurian and ACL would violate Nevada state court orders, and argues that “the filing of the application by Mr. Kurian amounts to a misrepresentation that he possessed authority to partition and partially assign the station.”¹⁷ While Ms. Kurian concedes that the question of whether the transaction would violate a Nevada court order must be decided by the court, she nonetheless argues that “were the Division simply to grant the subject application and allow consummation thereof without condition, Ms. Kurian could never be made whole because the Nevada court cannot exercise jurisdiction over [ACL].”¹⁸

6. We conclude that the Division decided the matter correctly. The Petition does not present any persuasive basis for departing from the Commission policy against interjecting itself into private disputes, especially those that are already before a court of competent jurisdiction. Although the Petition contends that “Mr. Kurian lacks the legal qualifications to enter into the transaction,” and that the filing of the Application constitutes misrepresentation, or at least a lack of candor, on his part,¹⁹ the Petition does not dispute that Mr. Kurian applied for the license, and is the licensee of record.²⁰ Ms. Kurian’s challenge to Mr. Kurian’s legal qualifications to file the Application, and her related allegations of misrepresentation and lack of candor, thus appear to be based solely on the premise that the proposed transaction contravenes a Nevada state court order.²¹ As the Division concluded, however, it is for the court, rather than the Commission, to determine whether the court’s orders permit the transaction and, if appropriate, to impose sanctions against Mr. Kurian or take other remedial action.

7. We also are not persuaded by the Petition’s argument that an unconditional grant of the Application would prevent Ms. Kurian from being “made whole” in the event that the court ultimately rules in her favor, because the court’s jurisdictional limitations would prevent it from compelling the parties to undo the transaction.²² To begin with, the Petition cites no precedent for holding that such jurisdictional considerations warrant an exception to the Commission’s general policy of non-intervention in private lawsuits.²³ In any event, the Petition does not demonstrate that the court would be unable to

¹⁶ *Id.* (stating that “it is universally held that rehearing will not be granted merely for the purpose of again debating matters on which the tribunal has once deliberated and spoken”); *see also* 47 C.F.R. § 1.106(c).

¹⁷ *See* Petition at 1; *see also id.* at 3 (arguing that Mr. Kurian’s filing of the application “amounted to a misrepresentation, or at the very least a gross lack of candor”).

¹⁸ *See id.* at 3.

¹⁹ *See id.*

²⁰ Mr. Kurian remains the licensee of record because the parties have not filed notification of consummation of the transaction. The parties were granted an extension of time, until May 10, 2007, to consummate the transaction. *See* FCC File No. 0002749571 (filed Sept. 13, 2006).

²¹ As support for a finding that Mr. Kurian lacked the legal qualifications to assign the license, the Petition cites Abacoa Radio Corp. (WRAI), *Memorandum Opinion and Order*, 2 Rad. Reg. 2d (P&F) 807 (Rev. Bd. 1964). (*Abacoa Radio*). In *Abacoa Radio*, however, the Review Board *declined* to designate a legal qualifications issue against a broadcast applicant based on uncertainty as to the applicant’s ownership due to a dispute among stockholders. *Id.* at 810 ¶ 7. We therefore find the Petition’s reliance on *Abacoa Radio* to be inapposite.

²² *See* Petition at 3.

²³ Ms. Kurian suggests that conditioning grant of the Application as she requests would be consistent with the action taken by the Commission in a 1964 decision. *See* Petition at 3, *citing* General Electric Co., *Memorandum Opinion and Order*, 45 F.C.C. 1592 (1964) (*General Electric*). In *General Electric*, however, the subject broadcast renewal applications were granted without conditions. *See General Electric*, 45 F.C.C. at 1598 ¶ 16.

make Ms. Kurian whole in the event of a favorable adjudication. As Mr. Kurian and ACL point out,²⁴ Ms. Kurian's interest appears to be not in the license for Station WQCP809 *per se*, but in securing a portion of any proceeds realized by Mr. Kurian in connection with an assignment of the license.²⁵ Thus, it would appear that the court could make Ms. Kurian whole through a monetary award, without respect to the court's jurisdiction *vel non* over ACL.

8. *Conclusion and Ordering Clauses.* The Petition fails to demonstrate that the Division erred in dismissing in part and denying in part Ms. Kurian's Objection to the Application. We find that the Division appropriately followed precedent in declining to deny the Application (or defer or condition its consent to the Application) because of the pendency of the divorce-related state court litigation between the Kurians.

9. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by Pappammal Wellington Kurian on May 3, 2006, IS DENIED.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

²⁴ See Kurian Opposition at 6; ACL Opposition at 7-8.

²⁵ The Petition itself indicates that Ms. Kurian's legal interest with respect to the license is in receiving an amount of money, not the license itself. See Petition at 2 (averring that "... according to the specific orders from the Nevada court, Mr. Kurian had authority to sell WQCP809 and divide the profits with his ex-wife. That is not what he did.").